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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,053	08/04/2003	Michael J. Hasday	HASDAY-I	5522
7590	09/07/2005		EXAMINER	
Carl A. Giordano Duane Morris LLP 380 Lexington Avenue New York, NY 10168			NGUYEN, KIM T	
			ART UNIT	PAPER NUMBER
			3713	

DATE MAILED: 09/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/634,053

Applicant(s)

HASDAY, MICHAEL J.

Examiner

Kim Nguyen

Art Unit

3713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20, 34 and 38-49 is/are pending in the application.
- 4a) Of the above claim(s) 14-20 and 34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 38-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Examiner acknowledges receipt of the amendment on 2/7/05. According to the amendment, claims 21-33 and 35-37 have been canceled, claims 14-20 and 34 have been withdrawn from consideration, and claims 1-20, 34, and 38-49 are pending in the application.

The indicated allowability of claims 1-13 and 38-49 in the office action issued on 5/17/05 has been withdrawn due to newly found 101 issue and newly found reference of Yamashita et al (US 6,755,743). Claims 1-13 and 38-49 are rejected as following:

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-13 and 38-49 are rejected under 35 U.S.C. 101 because claims 1-13 and 38-49 are abstract ideas. They do not produce a “concrete” and “tangible” result. For example, the steps of selecting a participant (team member) and allowing the participant (selected team member) to select another participant; and removing them from the pool of participating participants would be manipulation of an abstract idea. It does not produce a useful result. As such the claim is devoid of any limitation to a practical application in the

technological arts. Hence, the claims are not eligible for patent protection under the requirements of 35 USC 101.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-13 and 38-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamashita et al (US 6,755,743).

As per claim 1, Yamashita discloses a method for determining competitive partners. The method comprises selecting a participant in accordance with the associated ranking (col. 15, lines 55-67; col. 16, lines 3-4; col. 3, lines 24-30; and col. 20, lines 25-28); allowing the selected participant to select another participant (col. 12, lines 46-47 and 59-60). Yamashita does not explicitly disclose removing the selected participant and the selected other participant from the selected round. However, since Yamashita discloses that the next selection is not performed until the selected round is over and that the next selection is performed by selecting another player against which the player has not yet played the battle (col. 3, lines 25-45), it would have been obvious to

a person of ordinary skill in the art at the time the invention was made to include removing the selected participants from a selected round in the method of Yamashita in order to facilitate selection of competitors.

As per claim 2-3, Yamashita discloses organizing the participants into a first group and a second group; and associating a ranking with each participant in the groups (col. 10, lines 40-53 and col. 15, lines 30-35).

As per claim 4-5, Yamashita discloses determining ranking in accordance with completion of accumulated results (col. 19, lines 30-42).

As per claim 6 and 11, competitive games such as sporting events, television game shows, reality shows, or intellectual games would have been well-known types of competitive games.

As per claim 7, Yamashita discloses recording winning and losing participant and removing the losing participant from further participant in the competitive event (col. 3, lines 24-34; col. 17, lines 17-18; and col. 21, lines 1-5).

As per claim 8-9, ranking a winning participant according to a predetermined condition would have been obvious design choice according to a designer's preference.

As per claim 10, Yamashita discloses assigning a ranking to each participant based on performance in the round (col. 16, lines 66-67; col. 17, lines 1-2; and col. 19, lines 30-33).

As per claim 12, Yamashita discloses selecting participants from teams of individuals (col. 21, lines 1-5).


As per claim 13, continuing determining competitive partners in a competitive game until a single participant is remaining would have been both well-known and obvious to a person of ordinary skill in the art at the time the invention was made.

As per claim 38-49, refer to discussion in claims 1-13 above.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim Nguyen whose telephone number is 571-272-4441. The examiner can normally be reached on Monday-Thursday during business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai, can be reached on 571-272-7147. The central official fax number for the organization where this application or proceeding is assigned is 571-273-8300.

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Date: August 30, 2005



Kim Nguyen
Primary Examiner
Art Unit 3713